

COOLEY GODWARD KRONISH LLP
GREGORY C. TENHOFF (154553)
LISA BARNETT SWEEN (191155)
ELIZA HOARD (238276)
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Telephone: (650) 843-5000
Facsimile: (650) 849-7400

Attorneys for Defendants
VAXGEN, INC. and LISA BROOKS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ARIA RAZBAN,

Plaintiff,

v.

VAXGEN, INC., a Delaware corporation,
LISA BROOKS, and DOES 1 through 50,
inclusive,

Defendants.

No. C 07-03136 JL

**[PROPOSED] ORDER GRANTING
DEFENDANTS VAXGEN AND LISA
BROOKS' UNOPPOSED MOTION TO
COMPEL INDEPENDENT MENTAL
EXAMINATION OF PLAINTIFF ARIA
RAZBAN PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 35**

Complaint Filed: January 19, 2007
First Am. Compl. Filed: May 16, 2007
First Am. Compl. Served: June 1, 2007
Trial Date: Not Yet Set

Having considered the parties' papers, the Court finds that, pursuant to Rule 35 of the Federal Rules of Civil Procedure, good cause exists to grant defendants VaxGen, Inc. and Lisa Brooks' (collectively, "Defendants") Unopposed Motion to Compel Independent Mental Examination of Plaintiff Aria Razban. Accordingly, the Court hereby grants Defendants' unopposed motion.

IT IS THEREFORE ORDERED THAT:

1. Aria Razban ("Plaintiff") submit to, cooperate with, and complete an independent mental examination ("IME") on or before June 13, 2008. This IME shall consist of two parts.

1 The first portion of the IME will include a brief interview and thereafter psychological testing
2 conducted by Dr. Dale McNiel, a licensed clinical psychologist, which will be a maximum of
3 eight (8) hours (exclusive of breaks), to be completed on a day to be mutually agreed upon
4 between the parties. Although the ultimate selection of tests used will be based upon
5 Dr. McNiel's professional judgment and experience, such tests may include, but are not limited
6 to, short answer "pencil and paper" tests to assess personality factors and patterns as well as
7 specific psychological symptoms, cognitive tests to assess thinking and any impairments in
8 thought processes, and projective tests to evaluate psychological defenses and other underlying
9 psychological factors.

10 2. In addition, Plaintiff is ordered to submit to, cooperate with and complete the
11 second portion of the IME, which will occur on a separate day to be mutually agreed upon
12 between the parties. This second portion of the examination will consist of a formal forensic
13 psychiatric interview with Dr. Renee L. Binder, a board-certified psychiatrist, which will be a
14 maximum of six (6) hours (exclusive of breaks), and will consist of a mental status examination,
15 an assessment of Plaintiff's current functioning and complaints, and information about Plaintiff's
16 allegations in this lawsuit. Dr. Binder also will be permitted to obtain a complete history of
17 Plaintiff through the examination, which will include, but is not limited to, Plaintiff's recent and
18 past personal, family, development, medical, psychiatric, educational, employment, occupational,
19 marital, relationship, and legal histories. Dr. Binder also will be permitted to obtain a history of
20 Plaintiff's strengths and vulnerabilities during her life, including information about past stresses
21 and how she dealt with them. To determine the extent and causation of Plaintiff's emotional
22 distress related to the events in this lawsuit, Dr. Binder will be permitted to obtain information
23 about Plaintiff's pre-existing conditions and other possible stressors that may have impacted
24 Plaintiff during her employment and thereafter.

25 3. During each of the examinations of the IME, Plaintiff shall answer all proper
26 questions and inquiries submitted to her by the examiner, including occupational history and prior
27 injuries and diseases for the purpose of making a proper diagnosis of Plaintiff's condition.

28 4. Neither Plaintiff's counsel nor Defendants' counsel will be present during the

1 examinations. However, both Plaintiff and Defendants will be permitted to audiotape the
2 examinations in their entirety.

3 **5.** Should Plaintiff fail to attend a scheduled examination with Dr. Binder and/or
4 Dr. McNiel without providing written advance notice of the cancellation to Defendants' counsel
5 within at least five (5) business days of a scheduled examination, Plaintiff shall bear any and all
6 cancellation fees charged by the examiners. Moreover, should Plaintiff fail to submit to,
7 cooperate with, and complete the two distinct portions of the IME ordered herein, she will be
8 barred from introducing evidence at trial pertaining to her claims for mental, emotional,
9 psychiatric and/or psychological injury, and any harm relating thereto, and shall be barred from
10 seeking damages with respect thereto.

11 **IT IS SO ORDERED.**

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13 Dated: _____

Honorable James Larson
United States Chief Magistrate Judge

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